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# U.S. Circuit Court Judges: Profile of Professional Experiences Prior to Appointment

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May 9, 2014

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R43538

**CRS REPORT**

Prepared for Members and  
Committees of Congress

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## Summary

This report provides an analysis of the professional qualifications and experiences of U.S. circuit court judges who are currently serving on the federal bench. Interest in the professional qualifications of those nominated to the federal judiciary has been demonstrated by Congress and others. Congressional interest in the professional experiences of those nominated by a President to the federal courts reflects, in part, the evaluative role of Congress in examining the qualifications of those who are nominated to life-tenure positions. Other organizations, such as the American Bar Association (ABA), also have an ongoing interest in the professional qualifications of those appointed to the federal judiciary. Additionally, scholars have demonstrated an interest in this topic by examining whether a relationship exists between the professional or career experiences of judges and judicial decision making.

The analysis in this report focuses on the professional experiences of 163 active U.S. circuit court judges who were serving as of February 1, 2014. Active judges are those who have not taken senior status, retired, or resigned. Consequently, the statistics provided do not necessarily reflect all circuit court judges who are *sitting* on the bench (which include judges who have assumed senior status).

Some of this report's findings include the following:

- A majority, 54.6%, of active circuit court judges had prior judicial experience at some point before being appointed as circuit court judges (and 45.4% had no such experience).
  - Of the judges with prior judicial experience, 22.7% served solely as another type of federal judge (e.g., a U.S. district court judge), while 20.9% served solely as a state judge and another 11.0% had both prior federal and state judicial experience.
- A majority, 84.7%, of active circuit court judges had at least some prior experience as an attorney in private practice at some point prior to their appointment as a circuit judge.
  - Of active circuit court judges with private practice experience, a plurality (26.4%) had 15 or more years of experience as an attorney in private practice.
- While 45.4% of active circuit judges do not have prior judicial experience, a much smaller percentage, 15.3%, have no prior experience in private practice.
- Circuit court judges without either prior judicial experience or experience as an attorney in private practice had other professional experiences such as working as an attorney for the federal government or as a law professor.
- *Immediately prior* to their appointment to the appellate bench, most circuit court judges were either serving as another type of judge or had been engaged in private practice for at least 10 years.
  - Approximately half, 50.3%, of all active circuit judges were serving as another type of judge immediately prior to their appointment (i.e., serving as a district court judge, another type of federal judge such as a bankruptcy judge, or a state judge).

- Approximately one quarter, 25.8%, of active circuit court judges were working as attorneys in private practice immediately prior to being appointed as a circuit judge (with 22.1% having worked in private practice for 10 years or more).

## Contents

Introduction.....	1
Data Caveats .....	4
Most Common Types of Professional Experiences .....	4
Professional Position Immediately Prior to Appointment.....	6
Conclusion .....	8

## Figures

Figure 1. Percentage of Active U.S. Circuit Court Judges with Judicial Experience and Private Practice Experience .....	5
Figure 2. Percentage of Active U.S. Circuit Court Judges by Type of Professional Position Immediately Prior to Appointment.....	7

## Contacts

Author Contact Information.....	8
Acknowledgments .....	9

## Introduction

This report provides an analytic overview of the professional experiences and qualifications of those individuals who are currently serving as active U.S. circuit court judges.<sup>1</sup> Ongoing congressional interest in the professional experiences of judicial nominees reflects, in part, the evaluative role of Congress in examining the qualifications of those who are nominated by the President to life-tenure positions.

Senators, when giving floor speeches supporting circuit court nominations, routinely highlight certain professional experiences or qualifications often considered important to serving as a federal judge. Examples of such statements include the following:

A Senator noting that a nominee to the Fourth Circuit Court of Appeals had 22 years of prior judicial experience “at the State courts and the Federal courts.” The Senator stated that the nominee “has not only served as a distinguished judge, but also he came to the courts as an experienced prosecutor. He was with the Civil Rights Division at the Department of Justice and with the U.S. Attorney’s Office in Maryland.”<sup>2</sup>

A Senator noting that a nominee to the First Circuit had joined a prestigious law firm in the Senator’s home state, “where over the subsequent 32 years [he] specialized in complex civil litigation at both the trial and appellate levels.” The Senator also stated that the nominee had served as chairman of the state’s Professional Ethics Commission and as president of the state’s bar association, and that “his 30-plus years of real-world litigation experience would bring a valuable perspective to the court.”<sup>3</sup>

A Senator emphasizing that a nominee to the Seventh Circuit Court of Appeals would “bring almost 12 years of judicial experience” to the bench as a result of her service on the Wisconsin Supreme Court and as a trial judge on the Milwaukee County Circuit Court. The Senator also noted that prior to the nominee’s service as a state judge, the nominee had “practiced commercial litigation for 7 years at one of Wisconsin’s most prestigious law firms.”<sup>4</sup>

The professional experiences of judicial nominees are also of interest to interest groups, particularly professional organizations such as the American Bar Association (ABA).<sup>5</sup> Judicial

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<sup>1</sup> The analysis in this section provides statistics for active U.S. circuit court judges only (i.e., the professional experiences and qualifications of senior circuit court judges are not included in the analysis). Additionally, as of this writing, such statistics have not been calculated by CRS for active or senior U.S. district court judges.

<sup>2</sup> Sen. Barbara Mikulski, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, November 9, 2009, p.S11274.

<sup>3</sup> Sen. Susan Collins, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, February, 13, 2013, pp.S672-673.

<sup>4</sup> Sen. Orrin Hatch, “Nomination of Diane S. Sykes to be United States Circuit Judge for the Seventh Circuit,” Remarks in the Senate, *Congressional Record*, daily edition, June 24, 2004, p. S7360.

<sup>5</sup> According to the ABA, “in 1953, at the request of President Dwight D. Eisenhower, the ABA committee started to evaluate the professional qualifications of potential nominees to assist him in resisting growing pressure to repay political debts by appointing persons who might not have the professional qualifications to exercise the important responsibilities” of serving as a federal judge. Note that in 2001, “the Bush White House departed from long-standing practices and did not submit names of prospective nominees to [be evaluated by] the Standing Committee in advance of their nomination.” Senators serving on the Judiciary Committee, however, “asked the Standing Committee to continue to provide the Judiciary Committee with its evaluations of judicial nominees.” American Bar Association, “Frequently (continued...)

nominees are evaluated by the ABA's Standing Committee on the Federal Judiciary.<sup>6</sup> The committee's evaluation criteria focus "strictly on professional qualifications: integrity, professional competence and judicial temperament."<sup>7</sup>

The committee "believes that a prospective nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law" and that "substantial courtroom and trial experience as a lawyer or trial judge is important."<sup>8</sup> The committee also notes, however, that "distinguished accomplishments in the field of law or experience that is similar to in-court trial work ... may compensate for a prospective nominee's lack of substantial courtroom experience."<sup>9</sup> For prospective circuit court nominees, the committee states that "because an appellate judge deals primarily with the review of briefs and the records of lower courts, the committee places somewhat less emphasis on the importance of trial experience as a qualification for the appellate courts."<sup>10</sup>

Additionally, the professional or career experiences of judges prior to the start of their judicial service has also been of interest to scholars examining whether particular professional experiences might influence or explain variation in aspects of judicial decision making (e.g., whether a judge votes in a consistent ideological direction, the sources relied upon by a judge in reaching his or her decisions, whether a judge decides to publish his or her opinions, etc.).<sup>11</sup> For example, one study found that prior judicial

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Asked Questions About the ABA Standing Committee on the Federal Judiciary," March 2009, available at <http://www.americanbar.org/content/dam/aba/migrated/sfedjud/fjfaq.authcheckdam.pdf>. The process of submitting the names of prospective nominees to the Standing Committee for evaluation prior to individuals being nominated has resumed during the Obama presidency.

<sup>6</sup> In evaluating prospective nominees, the committee gives one of three possible ratings: "well qualified," "qualified," and "not qualified." According to past statistics provided by the ABA, as of March 2009, all but 33 of over 2,000 individuals who were formally nominated by Presidents since 1960 were rated as "qualified" or "well qualified." *Ibid.* For critical perspectives on the ABA's ratings, see Maya Sen, "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates," *Journal of Law and Courts*, vol. 2 (2014), pp. 33, 34 (finding that black and female U.S. district court nominees are more likely to be awarded lower qualification ratings by the ABA, even after matching on education, professional experience, years of legal experience, age, and ideology) (hereafter Sen, "How Judicial Qualification Ratings May Disadvantage"); Susan N. Smelcer et al., "Evaluating the ABA Ratings of Federal Judicial Nominees," *Political Research Quarterly*, vol. 65 (2012), pp. 827, 836 (finding that, for U.S. circuit court nominees, "all else being equal, a Democratic nominee is more likely to be rated Well Qualified than a similarly qualified Republican nominee"); Susan Brodie Haire, "Rating the Ratings of the American Bar Association Standing Committee on Federal Judiciary," *Justice System Journal*, vol. 22 (2001), pp. 1, 15 (finding that, for U.S. circuit court nominees, "caucasian males were more likely to receive a higher rating when compared to minorities or females, even after controlling for length of legal and judicial experiences. Overall, this analysis suggests an inherent bias in the rating process that favors traditional, establishment candidates" to the federal courts).

<sup>7</sup> American Bar Association, Standing Committee on the Federal Judiciary, "What It Is and How It Works," 2009, p. 1, available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/federal\\_judiciary/federal\\_judiciary09.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/federal_judiciary/federal_judiciary09.authcheckdam.pdf).

<sup>8</sup> *Ibid.*, p. 3.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.* Note that the committee also states that it "believes that prospective appellate court nominees should possess an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The ability to write clearly and persuasively, to harmonize a body of law, and to give meaningful guidance to the trial courts and the bar for future cases are particularly important skills for prospective nominees to" circuit court judgeships.

<sup>11</sup> See, for example, Deborah Jones Merritt & James J. Brudney, "Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals," *Vanderbilt Law Review*, vol. 54 (2001), pp. 71, 84-85 (finding that judges with prior (continued...)

experience for U.S. circuit court judges did not influence variation in judicial decision making in terms of the extent a judge voted in a consistent ideological fashion (such prior experience might have been hypothesized to be a source of consistency in judicial voting).<sup>12</sup> Another study found that district court judges whose primary work before becoming a judge involved non-private practice work experience (e.g., working as a government attorney or law professor) were less likely to rely on regulations and other Internal Revenue Service pronouncements in interpreting the federal tax code than judges whose work prior to becoming a judge was predominately as an attorney in private practice.<sup>13</sup>

Other scholars suggest that the lack of career diversity among federal judges might be problematic, in terms of the lack of diversity diminishing the institutional performance of the courts.<sup>14</sup> Specifically, they argue that, given appropriate procedural conditions, “the greater diversity of participation by people of different [professional] backgrounds and experiences, the greater the range of ideas and information contributed to the institutional process.”<sup>15</sup> Consequently, in the context of judicial decision making, “judges with varied career experiences bring distinct perspectives to the bench—perspectives that ultimately lead them to make distinct judicial choices—[and] merging jurists with diverse career paths on a particular court ought ... [to] lead to more effective decision making” by that court.<sup>16</sup>

In light of ongoing interest in the professional qualifications of those nominated to circuit court judgeships, this report seeks to inform Congress by providing statistics related to the professional

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experience representing management were significantly less likely to publish their opinions, perhaps because such judges “have more experience implementing the NLRA [National Labor Relations Act] than judges lacking a management background”; Gregory C. Sisk et al., “Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning,” *New York University Law Review*, vol. 73 (1998), pp. 1377, 1420-21 (finding that judges with criminal defense experience are more likely to invalidate federal sentencing guidelines than those without such experience); Orley Ashenfelter et al., “Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes,” *Journal of Legal Studies*, vol. 24 (1995), p. 257 (finding no relationship between whether U.S. district court judges had prior judicial experience and judicial outcomes, e.g., whether judges rule for or against a plaintiff); Sheldon Goldman, “Voting Behavior on the United States Courts of Appeals Revisited,” *American Political Science Review*, vol. 69 (1975), pp. 491, 499-500 (generally finding no relationship between whether a U.S. circuit court judge had judicial experience on another court prior to appointment on the appeals court or public prosecutorial experience and his or her voting behavior on various categories of cases; but finding a statistically significant result suggesting that judges without previous judicial experience tended to dissent at a higher rate than those with such experience); S. Sidney Ulmer, “Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases: 1947-1956 Terms,” *American Journal of Political Science*, vol. 17 (1973), pp. 622, 623-24 (finding that justices with federal administrative experience voted more conservatively than justices without such experience); Kenneth N. Vines, “Federal District Judges and Race Relations Cases in the South,” *Journal of Politics*, vol. 26 (1964), p. 338 (finding evidence that judges who held state political office were more negatively disposed toward race relations cases than judges who did not hold such positions).

<sup>12</sup> Erin B. Kaheny et al., “Change over Tenure: Voting, Variance, and Decision Making on the U.S. Courts of Appeals,” *American Journal of Political Science*, vol. 52 (2008), pp. 490, 493, 497.

<sup>13</sup> Daniel M. Schneider, “Empirical Research on Judicial Reasoning: Statutory Interpretation in Federal Tax Cases,” *New Mexico Law Review*, vol. 31 (2001), pp. 325, 347.

<sup>14</sup> Lee Epstein et al., “The Norm of Prior Judicial Experience and Its Consequences for Career Diversity on the U.S. Supreme Court,” *California Law Review*, vol. 91 (2003), p. 903.

<sup>15</sup> *Ibid.*, p. 944.

<sup>16</sup> *Ibid.*, p. 956.

qualifications or experiences of those currently serving on the bench as U.S. circuit court judges.<sup>17</sup>

Specifically, this report provides statistics and analysis related to (1) the percentage of active circuit court judges with judicial experience, as well as the type of judicial experience; (2) the percentage of active circuit court judges with private practice experience, as well as the length of time of such experience; and (3) the percentage of active circuit court judges by professional experience immediately prior to their appointment to a circuit court judgeship.

## **Data Caveats**

Note that the statistics provided in this report are based upon the professional experiences of individuals serving, as of February 1, 2014, as active U.S. circuit court judges. *Consequently, the statistics do not include circuit court judges who, prior to February 1, 2014, had assumed senior status, retired, or resigned.*<sup>18</sup>

The total number of circuit court judges included in the analysis is 163.<sup>19</sup> Consequently, this is the denominator used to calculate most of the statistics included in the report. The analysis is based on information provided by the *Biographical Directory of Federal Judges*.<sup>20</sup> This report will be updated annually by CRS at the beginning of each calendar year.

## **Most Common Types of Professional Experiences**

**Figure 1** provides statistics related to the two most common types of professional experiences of U.S. circuit court judges who are currently serving on the bench—prior judicial experience and experience working as an attorney in private practice.<sup>21</sup> The percentages reported for the two types of experiences are not mutually exclusive, meaning that there is some overlap between the two categories. For example, 47.9% of all active circuit court judges have both prior judicial

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<sup>17</sup> As of this writing, CRS has not compiled and analyzed similar data for active district court judges who are currently serving on the bench.

<sup>18</sup> Senior status judges are those judges who have retired from full-time service but continue, on a part-time basis, to hear cases or perform other duties related to judicial administration. Senior status eligibility is based upon a judge's age as well as his or her length of service as an Article III judge. Specifically, beginning at age 65, a judge may retire from office or take senior status after performing 15 years of active service as an Article III judge. A sliding scale of increasing age and decreasing service results in eligibility for retirement compensation at age 70 with a minimum 10 years of service.

<sup>19</sup> As of February 1, 2014, there were 16 vacant U.S. circuit court judgeships. These vacancies are not included in the statistics provided in the report.

<sup>20</sup> Consequently, the data analyzed are limited to information provided by the *Directory*. The *Directory* is maintained by the Administrative Office of U.S. Courts and is available at <http://www.uscourts.gov/JudgesAndJudgeships/BiographicalDirectoryOfJudges.aspx>.

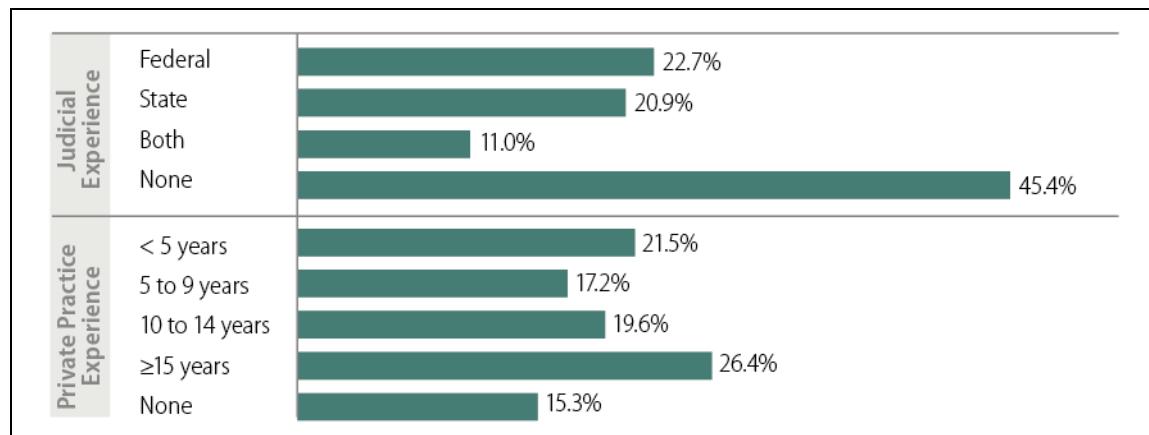
<sup>21</sup> Some organizations have called for broadening the professional diversity of judges serving on the federal bench. The Alliance for Justice, for example, has recently called upon the President to nominate individuals with experience working as attorneys for public interest organizations. Alliance for Justice, "Broadening the Bench: Professional Diversity and Judicial Nominations," February 6, 2014, available at <http://www.afj.org/wp-content/uploads/2014/02/prof-diversity-report-3.2.2014-FINAL-Updated-with-Noms-Through-2.6.14.pdf>.

experience as well as experience as an attorney in private practice (while 9.0% have neither prior judicial nor private practice experience).<sup>22</sup>

Altogether, 54.6% of U.S. circuit court judges who are currently serving had prior experience as another type of judge before their appointment to a circuit court (and 45.4% had no such experience). Of the judges with prior judicial experience, 22.7% served solely as another type of federal judge (e.g., a U.S. district court judge), while 20.9% served solely as a state judge and another 11.0% had both prior federal and state judicial experience. Of the 74 circuit judges with no prior judicial experience, 81.8% had worked as attorneys in private practice, including 39.2% who worked in private practice for 15 or more years (and another 14.9% who worked in private practice for 10 to 14 years).

Although over half of active circuit court judges have prior judicial experience (54.6%), a greater percentage have at least some prior experience as attorneys in private practice (84.7%).<sup>23</sup> Similarly, while 45.6% of active circuit judges do not have prior judicial experience, a much smaller percentage, 15.3%, have no prior experience in private practice.

**Figure 1. Percentage of Active U.S. Circuit Court Judges with Judicial Experience and Private Practice Experience**  
(as of February 1, 2014)



**Source:** CRS analysis of data provided by the Administrative Office of U.S. Courts.

**Note:** This figure shows, as of February 1, 2014, the percentage of active U.S. circuit court judges with judicial experience and private practice experience.

<sup>22</sup> The lack of a nominee's experience in a traditional legal occupation (such as an attorney in private practice) has, in some cases, led some Senators to oppose the nominee's nomination. For example, J. Harvie Wilkinson III was nominated by President Reagan to the Fourth Circuit on January 30, 1984. At the time, Senator Edward M. Kennedy stated, during the debate to invoke cloture on the nomination, that the nominee was "the least qualified nominee ever submitted for an appellate court vacancy." Senators' opposition to the nomination were based, in part, on the nominee's relatively young age (he was 39) and the fact that he had never practiced law. When nominated, Judge Wilkinson was a law professor at the University of Virginia and he had previously worked for a year as a Deputy Assistant Attorney General during the Reagan presidency. Linda Greenhouse, "Reagan Names 6 To Federal Appeals Courts," *New York Times*, August 2, 1984, available at <http://www.nytimes.com/1984/08/02/us/reagan-names-6-to-federal-appeals-courts.html>.

<sup>23</sup> At least one study has found that judicial nominees receiving the highest ABA ratings include those with previous judicial experience and/or nominees with more years of legal practice experience. Sen, "How Judicial Qualification Ratings May Disadvantage," p. 42.

**Figure 1** also shows that of active circuit court judges with private practice experience, a plurality (26.4%) had 15 or more years of experience as attorneys in private practice. Another 21.5% had less than 5 years of experience, while 17.2% had 5 to 9 years of experience and 19.6% had 10 to 14 years of experience. Altogether, 46.0% of active circuit court judges had 10 or more years of experience as attorneys in private practice (while 54.0% had less than 10 years of experience or no private practice experience).<sup>24</sup>

## Professional Position Immediately Prior to Appointment

**Figure 2** reports the percentage of active U.S. circuit court judges who had a particular type of position or occupation immediately prior to their appointment as a circuit court judge.<sup>25</sup> So, for example, a plurality of active circuit court judges, 27.0%, were U.S. district court judges immediately prior to being appointed as circuit court judges. Altogether, half (50.3%) of all active circuit court judges were serving as another type of judge (either a U.S. district court judge, another type of federal judge, or a state judge).<sup>26</sup>

The percentage of circuit court judges serving as another type of judge immediately prior to appointment might be lower than what has been the case, historically, for circuit court judges (at least during the first half of the 20<sup>th</sup> century). For example, of circuit court judges appointed during the seven presidencies from Theodore Roosevelt to Franklin Roosevelt, 63.7% were serving as another type of judge at the time of appointment or promotion to the U.S. courts of appeals.<sup>27</sup> Additionally, 55.6% and 57.5% of Eisenhower and Johnson circuit court appointees, respectively, were serving as judges prior to their appointment to a circuit court.<sup>28</sup> In general, service as a U.S. district court judge was the most common type of judicial experience of those serving as judges immediately prior to their appointment as a circuit court judge. As noted by one

<sup>24</sup> Overall, 89 of 163 circuit court judges included in the analysis had prior judicial experience (37 of the 89 had only federal experience, 34 only state experience, and 18 had served as a judge for both federal and state courts). Of the 163 judges, 74 had no prior judicial experience. For private practice experience, 138 of 163 judges had some experience as an attorney in private practice (while 25 had none). Of those with private practice experience, 43 had 15 or more years of experience, 32 had 10 to 14 years of experience, 28 had 5 to 9 years of experience, and 35 had less than 5 years of experience.

<sup>25</sup> Of the 163 active U.S. circuit court judges included in the analysis, 44 had been a U.S. district court judge immediately prior to their appointment, 8 had been another type of federal judge, 30 had been a state judge, 12 had been working as an attorney at the Department of Justice or in a U.S. Attorney's Office, 6 had been working in private practice for less than 10 years, 36 had been working in private practice for more than 10 years, 11 had been working as a law professor, and 16 had other types of positions.

<sup>26</sup> Other types of federal judges included in the analysis were U.S. bankruptcy judges and U.S. magistrate judges.

<sup>27</sup> Rayman L. Solomon, "The Politics of Appointment and the Federal Courts' Role in Regulating America: U.S. Courts of Appeals Judgeships from T.R. to F.D.R.," *American Bar Foundation Research Journal*, vol. 9 (1984), pp. 285, 304. As indicated by the article, the percentage of circuit court appointees who were another type of judge at the time of being appointed or promoted to a circuit court judgeship, by President in chronological order, were 78.6% (T. Roosevelt), 75.0% (Taft), 52.6% (Wilson), 83.3% (Harding), 75.0% (Coolidge), 85.7% (Hoover), and 47.7% (F.D.R.).

<sup>28</sup> In contrast, 47.6% of President Kennedy's circuit court appointees were judges immediately prior to their appointment or promotion to U.S. circuit courts of appeals. Sheldon Goldman, "Characteristics of Eisenhower and Kennedy Appointees to the Lower Federal Courts," *Western Political Quarterly*, vol. 18 (1965), pp. 755, 758. See also Sheldon Goldman, "Johnson and Nixon Appointees to Lower Federal Courts: Some Socio-Political Perspectives," *Journal of Politics*, vol. 34 (1972), pp. 934, 936.

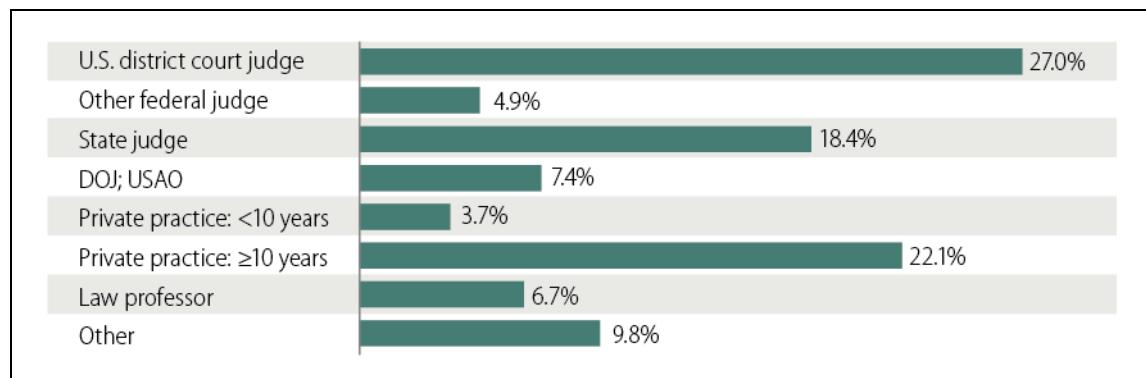
scholar, the “federal district court bench is a training camp for the federal courts of appeals bench. A president faced with a vacancy on a court of appeals looks, though not exclusively, to sitting district court judges.”<sup>29</sup>

Of circuit court judges currently serving on the bench, approximately one-quarter (25.8%) were working as attorneys in private practice prior to being appointed as a circuit court judge, with 22.1% having worked in private practice for 10 years or more. Additionally, of those working in private practice for 10 years or more, 80.6% had been working as an attorney in private practice for at least 15 years.

As the percentages reported in **Figure 2** indicate, a relatively large majority of active circuit court judges (72.4%) were, prior to being appointed as circuit judges, serving as either another type of judge or engaged in private practice for 10 or more years (and often for 15 or more years).

**Figure 2. Percentage of Active U.S. Circuit Court Judges by Type of Professional Position Immediately Prior to Appointment**

(as of February 1, 2014)



**Source:** CRS analysis of data provided by the Administrative Office of U.S. Courts.

**Note:** This figure shows, as of February 1, 2014, the percentage of active U.S. circuit court judges by type of professional position immediately prior to their appointment as a circuit judge.

Other types of positions held by active U.S. circuit court judges prior to being appointed include working as an attorney at the Department of Justice (DOJ) or a U.S. Attorneys’ Office (7.4%) or working as a law professor (6.7%). Another 9.8% of active circuit court judges held other types of positions immediately prior to being appointed.<sup>30</sup>

<sup>29</sup> Karen Swenson, “Promotion of District Court Judges to the U.S. Courts of Appeals: Explaining President Reagan’s Promotions of His Own Appointees,” *Justice System Journal*, vol. 27 (2006), p. 208. Swenson examined whether Presidents seek to reward district court judges who vote the “right” way. She concludes that, “at least for Reagan-appointed judges considered ... , the most convincing conclusion to draw from these data is that district judges’ records of conservative voting and support for the federal government, relative to their benchmates, are irrelevant to the president’s decision” to nominate the district court judge to a vacant circuit court judgeship. Instead, the “decision to elevate a district judge may be ... influenced by factors not measured [in the article], such as pressure from a key senator or two, close friends of the president, or high-ranking officials in the president’s party.” *Ibid.*, p. 217.

<sup>30</sup> Examples of other types of positions that circuit court judges held immediately prior to their appointment include state attorney general; deputy general counsel of a research university; assistant to the President of the United States and staff secretary; deputy secretary and general counsel of a state agency; and deputy secretary of a U.S. federal executive department.

Of appointees of Democratic Presidents who are currently on the bench, the most common type of position immediately prior to appointment as a circuit court judge was service as another type of judge (54.8% of all active appointees), with a plurality (31.0%) having prior service as a U.S. district court judge. Other types of positions or occupations held by active circuit court appointees of Democratic Presidents immediately prior to appointment were attorneys in private practice (26.2%), attorneys at the Department of Justice or a U.S. Attorney's Office (8.3%), and law professors (6.0%).<sup>31</sup>

Of appointees of Republican Presidents currently on the bench, the most common type of position immediately prior to appointment as a circuit court judge was service as another type of judge (45.6%), with a plurality (22.8%) having served as a U.S. district court judge. Other types of positions or occupations held by active circuit court appointees of Republican Presidents immediately prior to appointment were attorneys in private practice (25.3%), attorneys at the Department of Justice or a U.S. Attorney's Office (6.3%), and law professors (7.6%). Another 15.2% of Republican appointees had another type of position or occupation immediately prior to their appointment.<sup>32</sup>

## Conclusion

This report provides a statistical overview of the professional qualifications and experiences of active U.S. circuit court judges. Ongoing congressional interest in the professional background of those nominated to the federal bench reflects, in part, the role of Congress in evaluating the qualifications of those who are nominated by the President to life-tenure positions.

As discussed above, a majority of current circuit court judges have prior judicial experience. A greater majority of active circuit judges also have experience working as attorneys in private practice, often for relatively lengthy periods of time. There are, however, judges without either type of experience who have other types of professional experiences such as working as an attorney for the federal government or as a law professor.

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<sup>31</sup> The specific number of judges by the type of experience immediately prior to appointment and by party of the appointing President are available from the author upon request.

<sup>32</sup> Examples of Republican appointees included in the “other” category are Judge Danny L. Boggs (Reagan appointee, position immediately prior to appointment was Deputy Secretary of Energy); Judge Edward E. Carnes (G.H.W. Bush appointee, Asst. Attorney General, Alabama); and Judge Lavenski R. Smith (G.W. Bush appointee, Arkansas Public Service Commissioner).

## **Acknowledgments**

The author thanks Amber Wilhelm, Graphics Specialist in the Publishing and Editorial Resources Section of CRS, for her work on the figures included in this report.